

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1031 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 -No

KALABHAI DHULABHAI

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA for Petitioner

MR DN PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16-10-98

C.A.V. JUDGEMENT(R.P.Dholakia,J.)

The appellant-accused has preferred this appeal against the judgment and order passed by learned Addl. Sessions Judge, Mehsana in Sessions Case No.36 of 1997 on 30-9-1997 whereby appellant was ordered to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- (in default, to suffer one year rigorous

imprisonment) for an offence punishable under Sec.376 of Indian Penal Code and also rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- (in default, to suffer rigorous imprisonment of six months) for an offence punishable under Sec. 307 of Indian Penal Code and ordered to run both the sentence concurrently.

2. The short facts of the prosecution case are that on 28-9-1996, the prosecutrix-Tinaben had gone for supplying milk to the diary. She was coming back to her house. At about 6.15 p.m. when she was near the field of one Kanuji Dhanaji, accused caught hold her from behind and dragged her to the field having a standing crop of gavar where he committed rape on her. When she raised shouts by resisting, accused caused injuries on her. On hearing her shouts, witness Mahdaji Dahyaji came to the place of incident and saw the accused running from the place after inflicting knife injury on the stomach of prosecutrix. She was first taken to her residence from where she was taken to Mehsana Civil Hospital and after taking primary treatment, she was referred to Civil Hospital. Police recorded the FIR and offence was registered at Vasai Police Station. Police Inspector, Shri L.S.Damor started the investigation, recorded statements of various witnesses, drawn panchnama of scene of offence as also the person of the prosecutrix and accused and recovered the clothes, etc. and accused was sent for medical examination. After collecting the medical certificate and other documentary evidences, I.O. submitted the charge-sheet against the accused. Accused was committed to the Court of Sessions where a charge was framed. Accused pleaded innocence and wanted to be tried. After hearing the learned advocates of respective parties and on appreciation of evidence, learned trial Judge recorded the order of sentence, against which, the present appeal is preferred.

3. We issued notice to the State and called for the record and proceedings. We heard learned advocate appearing for the appellant-accused at length. He argued that learned trial Judge without corroboration accepted the evidence of prosecutrix. He contended that medical evidence and FSL report do not support the say of the prosecution. It is also contended that oral evidence of Mahdaji Dahyaji and Amaji Mohanji (P.W. Nos.7 and 11) is not believable because if at all they were there, when they saw the accused running after inflicting a knife blow on prosecutrix, they ought to have followed him, but they did not do so which shows that they have not seen the incident. He further contended that there was enmity between accused and father of prosecutrix. It is also

contended that someone else might have raped her and accused has been falsely implicated in this case.

4. On going through the record and oral evidence of important witnesses, namely, prosecutrix and witnesses, it appears that date of birth of prosecutrix is 5-6-1982 and date of incident is 28-9-1996. So, on the date of incident, prosecutrix was 14 years, 3 months and 23 days and in any case, she was below 16 years which fact is supported by medical evidence. The doctor, who has carried out the ossification test, opined that the prosecutrix is between 12 to 14 years of age.

5. The prosecutrix categorically deposed the incident in toto and she stated that the appellant-accused is of the same Village. So, question of mistake in identifying the accused does not arise. Merely the witnesses have not followed the accused to catch him does not mean that the oral evidence of prosecutrix and witnesses should be discarded especially when the prosecutrix was seriously injured and witnesses have seen the accused. When injured was lying at the scene of incident, it is the primary duty of every person to provide immediate medical assistance to the victim which they have done. Hence, evidence of prosecutrix is corroborated by the evidence of witnesses.

6. Dr.N.R.Shah, exh.27, who issued a certificate after medical examination, categorically deposed that injury No.1 mentioned in the certificate exh.28 is likely to be caused by teeth bite whereas injury Nos.2 and 4 were possible by nail and injury No.3 was likely to be caused by sharp cutting weapon like muddamal article No.10. He further deposed that if an attempt to commit sexual intercourse is being done on a girl of tender age like the prosecutrix, then the injuries like the ones on the private part of the prosecutrix are possible. So, prosecution gets support from the above evidence of doctor and also from case paper of prosecutrix exh.32 wherein it is mentioned in the column of history as "alleged rape with an alleged assault". Hence, we are of the view that learned trial Judge has rightly convicted the accused and no interference is required to be made in the judgment and order passed by learned Addl. Sessions Judge, Mehsana in Sessions Case No.36 of 1997 on 30-9-1997.

7. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as

under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the facts and circumstances of the case, appeal stands rejected.

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